

missary general the situation and state of the pieces of ordinance, arms, implements and accoutrements, the property of the territory, entrusted to their charge respectively.

SECTION 13. The commissary general shall report <sup>Make annual report.</sup> annually to the commander-in-chief, whose duty it shall be to transmit the same to the legislature, a true and particular statement, showing the actual situation and disposition of all the ordinance, arms, ammunition and other munitions of war, property and things, which in any wise appertain to or respect the department confided to his keeping.

SECTION 14. He shall keep a just and true account of all the expenses necessarily incurred in and about his department, and, once at least in every six months, deliver the same to the auditor, who shall thereupon examine and audit the same, and shall draw his warrant on the treasurer for such sum as he shall audit and certify to be due.

SECTION 15. This act to take effect from and after its passage, and all laws contravening the same are hereby repealed.

Approved January 17, 1838.

---

## No. 58.

AN ACT to provide for the appointing of justices of the peace, to prescribe their powers and duties, and to regulate their proceedings.

SECTION 1. *Be it enacted by the council and house of Representatives of Wisconsin territory, as follows:* There shall be appointed in each of the organized counties of this territory, as many justices of the peace as, in the opinion of the governor, the public good and the wants of the people may require, and whose term of service shall continue four years unless sooner removed by the governor. <sup>Number of justices and term of office.</sup>

SECTION 2. No clerk of the district court, or his deputy, shall hold or exercise the office of justice of the peace. <sup>Who disqualified.</sup>

SECTION 3. Every justice of the peace shall within twenty days after the receipt of his commission, take <sup>Oath of office.</sup>

and subscribe an oath to support the constitution of the United States, and the laws of this territory, and to administer equal justice to the poor and the rich, and to faithfully demean himself in office; which oath shall be endorsed on the back of his commission, shall be recorded in the office of the clerk of the district court, and in case of his failing so to do it shall be deemed a refusal of such appointment.

**Penalty for failure.**

SECTION 4. Any person who shall act as a justice in violation of the preceding section, shall on conviction thereof by indictment, be fined in a sum not exceeding one hundred dollars, and his acts shall be null and void.

**Who incapable.**

SECTION 5. No person shall be appointed to the office of justice of the peace, who is not a citizen of the United States and who shall not have been an inhabitant of this territory twelve months, and of the county for which he is appointed six months before his appointment.

**Duty of clerk.**

SECTION 6. The clerk of the district court, when he records the commission and oath of any justice of the peace in the manner pointed out by this act, shall certify to the governor the acceptance of such commission.

**On a division of counties.**

SECTION 7. When a county shall be divided, any justice of the peace of the original county, who shall fall into the new county, shall continue to discharge the duties of justice of the peace in such new county until his commission expire as if the county had not been divided.

**Jurisdiction in preliminary matters.**

SECTION 8. Justices of the peace shall have power and jurisdiction throughout their respective counties, as follows:

1st. Jointly and severally to cause to be kept all laws made for the preservation of the peace.

2d. To cause to come before them or any of them, persons who shall break the peace, and commit them to jail or bail them as the case may require.

3d. To arrest and cause to come before them, persons who attempt to break the peace, or who are not of good fame, and compel them to give security for their good behavior to keep the peace or both.

SECTION 9. If such persons refuse or neglect to give security, they shall be committed until they find the same.

**SECTION 10.** Every recognizance so taken for the keeping of the peace, or for good behavior or for both, shall be certified to the next district court of the county.

**SECTION 11.** In the following cases, and no others, a justice of the peace may punish for contempt, persons guilty of the following acts: May punish for contempts.

1st. Disorderly, contemptuous, insolent behavior, towards such justice, whilst engaged in the trial of a cause, or in rendering judgment, or in any judicial proceedings, which shall tend to interrupt such proceeding, or to impair the respect due to his authority.

2d. Any breach of the peace, noise or other disturbance, tending to interrupt the official proceedings of such justice.

3d. Resistance unlawfully offered to any person in the presence of the justice, to the execution of any lawful order or process made or issued by him.

**SECTION 12.** Punishments for contempts in the foregoing cases, may be by fine, not exceeding twenty dollars, or by imprisonment in the county jail, not exceeding two days, at the discretion of the justice; but no person shall remain in jail for the non-payment of a fine. Limited.

**SECTION 13.** No person shall be punished for a contempt, before a justice of the peace, until an opportunity shall have been given to him to be heard in his defense, and for that purpose the justice may issue his warrant to bring the offender before him.

**SECTION 14.** Upon the conviction of any person for a contempt, the justice shall make up a record of the proceedings on such conviction, stating therein the particular circumstances of the offense and the judgment rendered thereon. Record to be made up.

**SECTION 15.** The warrant of commitment for any contempt, shall set forth the particular circumstances of the offense, or it shall be void.

**SECTION 16.** Justices of the peace are empowered to grant subpoenas for witnesses, in all matters submitted to referees and arbitrators, and in all cases where it may be necessary for taking depositions. When justices may grant subpoenas.

**SECTION 17.** Every justice of the peace who shall be convicted of bribery, perjury or any other infamous crime, or convicted of any wilful misdemeanor in Liability.

office, by indictment, such conviction shall constitute a removal from office.

SECTION 18. All resignations of justices of the peace shall be in writing, and addressed to the governor, or to the secretary of this territory.

When to deliver up records, &c.

SECTION 19. Whenever a justice of the peace shall resign, move out of a township, or be otherwise disqualified, he shall immediately thereafter deliver to the next nearest justice of the peace in the same township, all dockets, records, books, papers, and documents, appertaining to his office, or relating to any suit, matter or controversy, committed to him in his official capacity, he taking a receipt therefor.

## ARTICLE 2.

### OF THE JURISDICTION OF JUSTICES OF THE PEACE, AND AUTHORIZING THEM TO HOLD A COURT.

Jurisdiction of causes tried.

SECTION 1. Every justice of the peace is authorized to hold a court, for the trial of all actions in the following section enumerated, and to hear, try and determine the same, according to law and equity.

SECTION 2. 1st. Of all actions of debt, covenant, and assumpsit, and all other actions founded on contract, where the debt or balance due, or damages claimed, exclusive of interest, shall not exceed fifty dollars.

2d. Actions of trespass and trespass on the case, for injuries to persons or to real or personal property, wherein the damage claimed shall not exceed fifty dollars.

3d. Actions of detinue and replevin, when the thing demanded or claimed, does not exceed in value fifty dollars.

4th. Actions commenced by attachment of property, as hereinafter provided, as well as for any penalty given by any statute of this territory, when the amount shall not exceed fifty dollars, and

5th. To take and enter judgment on the confession of a defendant, when the amount confessed shall not exceed the amount for which a justice is authorized to render judgment in action.

When plaintiff shall pay costs.

SECTION 3. If any suit, properly cognizable before a justice of the peace, be brought in any court of

record, the plaintiff may recover judgment therein, but the costs of suit shall be adjudged against him.

SECTION 4. No justice of the peace shall have cognizance: Restriction of jurisdiction.

1st. Against an executor or administrator, for any debt or demand due from the testator or intestate; nor

2d. Of any action of slander, malicious prosecution or false imprisonment, nor

3d. Of any action, where the title to lands and tenements shall come in question.

SECTION 5. Every justice of the peace shall have jurisdiction co-extensive with the county for which he is appointed. Territorial extent.

SECTION 6. Every action, cognizable before a justice of the peace, instituted by summons or warrant, shall be brought before some justice of the township, either Before whom action must be brought.

1st. Wherein the defendant resides, or

2d. Wherein the plaintiff resides, and the defendant may be found; but if the defendant in any action is a non-resident of the county, or has absconded from the usual place of abode, the action may be brought before some justice of any township where he may be found.

SECTION 7. Every action, instituted by attachment, shall be brought before some justice of the township wherein the property of the defendant may be found.

SECTION 8. If there are several persons jointly liable to a suit, residing in different townships in the same county, the suit may be brought in any such township, against all such persons; and if any defendant in a suit, instituted by attachment, has property in several townships in the same county, such attachment may be issued against the property of the defendant wherever it may be found in the county.

SECTION 9. Whenever there shall be no justice of the peace within the township where any suit, cognizable before a justice, ought to be brought, or whenever all the justices of such township are interested in any suit, or otherwise disqualified by law from trying the same, every such suit may be brought before some justice of any adjoining township of the same county.

## ARTICLE 3.

OF THE COMMENCEMENT OF SUITS AND THE SERVICE  
AND RETURN OF PROCESS.

- Return day.** SECTION 1. Every justice of the peace, shall appoint one day in each week for the return of all summons by him issued, and every summons shall be returnable on such day, except in cases where it is specially otherwise provided.
- Docket,** SECTION 2. Every justice of the peace shall keep a docket, in which he shall enter.
- its contents.** First.—The title of causes commenced before him.  
Second.—The time when the first process was issued against the defendant, and the particular nature thereof.  
Third.—The time when the parties appeared before him, either without process, or upon the return of process.  
Fourth.—A brief statement of the nature of the plaintiff's demand, and the amount claimed, and if any set-off was pleaded a similar statement of the set-off and the amount claimed.  
Fifth.—Every adjournment, stating at whose request and at what time.  
Sixth.—The time when the trial was had, stating whether the same was by jury or by the justice.  
Seventh.—The verdict of the jury and when rendered.  
Eighth.—The judgment rendered by the justice and the time of rendering the same.  
Ninth.—The time of issuing execution, and the name of the officer to whom delivered, and an account of the debt, damages, and costs, as the same was endorsed on the back of the execution.  
Tenth.—The fact of an appeal having been made and allowed, and when made and allowed.
- SECTION 3. The several items, in the preceding section enumerated, together with all other entries specially required by this act to be made in the docket, shall be entered under or opposite to the title of each cause to which they respectively relate and in addition thereto, the justice may enter any other proceedings, had

before him in the cause, which he shall think it useful to enter in such docket.

SECTION 4. Suits may be instituted before a justice, either by the voluntary appearance and agreement of the parties, or by process; and the process for the institution of a suit before a justice, shall be either a summons, a warrant against the person, or attachment against the property of the defendant. How suits may be instituted.

SECTION 5. Whenever the plaintiff is a non-resident of the county, the justice may require of him security for the costs, before the institution of the suit; and whenever a suit has been commenced by any person, whether a resident of the county or not, the justice shall, on the application of the defendant, order the plaintiff to give security for the costs; and if the plaintiff refuse to comply with the order the justice shall dismiss the suit. Security for costs.

SECTION 6. Whenever any suit shall be founded on an instrument of writing, purporting to have been executed by the defendant, such instrument shall be filed with the justice before any process shall be issued. Note to be filed with the justice unless lost.

SECTION 7. But if such instrument be alleged to be lost, or destroyed, it shall be sufficient for the plaintiff to file with the justice the affidavit of himself or some other creditable person, stating such loss or destruction, and setting forth the substance of such instrument.

SECTION 8. If any suit or set-off, be founded upon any lost or destroyed instrument of writing, the party, relying upon such lost instrument, shall be required, upon the trial or hearing of the cause, to prove such loss or destruction, either by his own oath, or by other competent testimony. And if upon such trial or hearing it appears that the same was intentionally put away or destroyed, the demand or set-off founded upon such instrument shall be rejected. Proof of loss.

SECTION 9. In any suit founded on an account, a bill of the items of such account shall be filed with the justice before any process shall be issued in the suit. Bill of items.

SECTION 10. All process issued by justices of the peace, shall run "in the name of the United States of America," be dated on the day it is issued, and shall be signed by the justice granting the same. Requisites of process.

SECTION 11. In all cases not otherwise specially Summons.

provided for, the process in all suits shall be a summons, and every summons shall be directed to the constable of the township, in which the justice, who granted the same, resides, except when it is otherwise specially provided, and shall command him to summon the defendant to appear before the justice who issued the same, at a time and place to be named in the summons, not less than six, nor more than thirty days, from the date thereof, to answer the complaint of the plaintiff.

When to be directed to the sheriff.

SECTION 12. If any plaintiff files with the justice the affidavit of himself, or some other creditable person, stating that such plaintiff has a joint cause of action against several persons, inserting their names therein, and that such persons reside in different townships in the same county, specifying therein the townships in which they respectively reside, and that the plaintiff desires to bring a joint action against them, the summons shall be directed to the sheriff of the county in which the defendants reside, who is commanded to serve the same.

When served, and how executed.

SECTION 13. Every summons shall be served at least six days before the return day thereof, and shall be executed either,

1st. By reading the same to the defendant, or,

2d. By delivering a copy to the defendant, or,

3d. By leaving a copy of such summons at the usual place of abode of the defendant, with some person of the family, above the age of fifteen years.

When warrant to be issued.

SECTION 14. A justice of the peace shall issue a warrant in every case, where he is satisfied from the affidavit of the person demanding the same, or from any other person, that the plaintiff has a subsisting and unsatisfied cause of action against the defendant, and that the defendant is about to remove from the county, or to abscond from his usual place of residence, or that the plaintiff will be in danger of losing his debt or demand unless such warrant be granted.

How served.

SECTION 15. A warrant shall be served by arresting the defendant, and taking him before the justice who issued the same; but if such justice be, on the return thereof absent, or unable to try the cause, or if it be made to appear to the justice by the affidavit of the defendant, that said justice is a material witness for the defendant in the cause, or is near of kin to the

When returned to another justice.

plaintiff in suit, stating therein the degree, the constable shall forthwith take the defendant to the nearest justice of the same township, who shall take cognizance of the cause, and proceed therein, as if the warrant had been issued by himself.

SECTION 16. When a defendant is brought before a justice on a warrant, he shall be detained in the custody of the constable until the justice shall direct his release: but in no case shall the defendant be detained longer than twenty-four hours from the time he shall be brought before the justice, unless within that time the trial of the cause has commenced, or unless it has been delayed at the instance of the defendant.

Detention limited.

SECTION 17. Every justice issuing any process authorized by this act, upon being satisfied that such process will not be executed for want of an officer to be had in time to execute the same, may empower any suitable person, not being a party to the suit, to execute the same, by an endorsement on the process to the following effect, "at the request and risk of the plaintiff I authorize \_\_\_\_\_ to execute and return this writ. E. F., justice of the peace." And the person so empowered, shall thereupon possess all the authority of a constable in relation to the execution of such process, and shall be subject to the same obligations, and shall receive the same fees for his services.

Special constable.

SECTION 18. If at any time after the commencement of a suit, the defendant pay to the constable the full amount of the claim, and the costs which may have then accrued, the suit shall be discontinued, or if it be further prosecuted the plaintiff shall pay all costs that may accrue after such payment; and the justice before whom the suit is brought shall endorse the amount upon the summons or warrant for which suit is commenced including interest and costs.

When suit to be discontinued.

SECTION 19. Every constable serving any process authorized by this act, shall return thereon in writing (endorsed on the back) the time and manner of service, and shall sign his name to such return.

Constable's return.

SECTION 20. If any constable fail to execute any process to him delivered, and make due return thereof, unless for good cause, or make false return, such constable, for every such offense, shall pay to the party injured ten dollars, and all damages such party may

Liability of constable.

have sustained by reason thereof, to be recovered by an action of debt founded upon this statute.

#### ARTICLE 4.

##### OF THE APPEARANCES AND PLEADINGS OF THE PARTIES AND OF ADJOURNMENT.

**How plaintiff may appear.** SECTION 1. Any plaintiff in any suit, except persons under twenty-one years of age, may appear and conduct his suit either by agent or in person.

**Appointment of next friend.** SECTION 2. No suit shall be instituted by an infant plaintiff until a next friend for such infant shall have been appointed. Whenever requested the justice shall appoint some suitable person, who will consent thereunto in writing, to be named by such plaintiff, to act as his next friend in such suit, who shall be responsible for the costs therein.

**How defendant may appear.** SECTION 3. Every defendant in a suit may appear and defend the same, either in person or by agent, except persons under twenty-one years of age.

**Appointment of guardian.** SECTION 4. After the service and return of process against an infant defendant the suit shall not be further prosecuted until a guardian for such defendant shall have been appointed. Upon the request of such defendant, the justice shall appoint some person, who will consent thereto in writing, to be the guardian of the defendant in defense of the suit; and if the defendant shall not appear on the return day of the process, or if he neglect or refuse to nominate such guardian, the justice may, at the request of the plaintiff, appoint any discreet person as such guardian, and the consent of such guardian or next friend shall be filed with the justice, and the guardian for the defendant shall not be liable for any costs in the suit.

**Agent.** SECTION 5. A party authorized to appear by agent, may appoint any person to act as such agent; and the authority of the agent may be either written or verbal, and shall in all cases when the justice requires proof, be proven either by the agent himself, or by other competent testimony, unless admitted by the opposite party.

**Time of appearance.** SECTION 6. Upon the return of a summons duly served, the justice shall wait one hour after the time

specified in such writ, for the appearance of parties unless they sooner appear.

SECTION 7. When both parties first appear before the justice, either upon the return of process or upon their voluntary appearance without process, the justice shall on the application of the defendant, and may without such application, require of the plaintiff a brief verbal statement of the nature of his demand. Declaration.

SECTION 8. A defendant may set off any demand which he may have against the plaintiff, in all cases where such set-off, is allowed by the statutes of this territory regulating set-off, except in the two following cases : Set-off.

First.—When the demand to be set-off exceeds the jurisdiction of justice's court, or, When denied.

Second.—When it is founded upon an instrument of writing, executed by the plaintiff, and assigned to the defendant, and it shall not appear on the trial of the cause that the assignment was made to the defendant previous to the commencement of the suit.

SECTION 9. To entitle a defendant to set-off any demand, he must give notice thereof in court, either verbal or written, before the jury is sworn, or the trial submitted to the justice ; and when the set-off is founded upon an instrument of writing, executed by the plaintiff, or by his testator or intestate, or upon an account, he must, at the time of giving such notice, file with the justice, such instrument or a bill of the items of such account. Notice necessary.  
Written instruments to be filed, unless lost.

SECTION 10. If such instrument be alleged to be lost or destroyed, it shall be sufficient for the defendant to file with the justice an affidavit, similar to that required of a plaintiff, upon instituting a suit in justice's court, on a lost or destroyed instrument of writing.

SECTION 11. If the amount of the set-off duly established be equal to the plaintiff's debt, judgment shall be entered for the defendant with costs of suit ; if it be less than the plaintiff's debt, the plaintiff shall have judgment for the residue only with costs, and if it be more than the plaintiff's debt, the defendant shall have judgment for the excess, with costs, and execution shall be awarded, and be subject to the same stay, as upon a judgment in a suit brought by such defendant. How judgment and costs regulated.

In case of ex-  
ecutors, &c.

**SECTION 12.** Whenever a set-off is established, in a suit brought by executors or administrators, exceeding the demand of the plaintiff, the judgment shall be against them in their representative character, and shall be evidence of a debt established, but no execution shall issue thereon.

Plea of title in  
action of tres-  
pass.

**SECTION 13.** If in a suit for trespass upon any lands or tenements, the defendant shall justify the trespass by a plea of title, the justice shall immediately make an entry of it in his docket, shall cease all further proceedings in the case, and certify and return to the district court of the county, a transcript of all the entries made in his docket relating to the case, together with all the process and other papers relating to the suit, and filed therein, in the same manner and within the same time as upon an appeal.

Possession  
sufficient for  
plaintiff.

**SECTION 14.** Upon the filing of the proceedings and papers in the office of the clerk, the court shall become possessed of the cause, and proceed therein to final judgment, as upon an appeal; but upon the trial in such court, the plaintiff shall only be required to prove himself entitled to or in possession of the lands or tenements on which the trespass is alleged to have been committed, and no other bar to the action shall be pleaded by the defendant, except the plea of title.

Adjournment.

**SECTION 15.** A justice of the peace, without the application or consent of either party, may, if it be necessary, adjourn a cause not exceeding three days, for any one adjournment, but a justice shall in no case adjourn a cause commenced by warrant upon his own motion.

**SECTION 16.** A justice of the peace, on the application of either party, with good cause shown, may adjourn a cause not exceeding ninety days, for any one adjournment, and may adjourn for a longer period with the consent of both parties.

When allowed  
on application.

**SECTION 17.** No adjournment shall be allowed upon the application of a party, unless such party satisfy the justice by his own oath, or affidavit of some other person, that he cannot safely proceed to trial for want of some material testimony or witness, that he had used due diligence to obtain the same, and that if an adjournment be allowed he will be able to procure such testimony or witness in time to be used upon the trial.

**SECTION 18.** Every such adjournment shall be for

such reasonable time as will enable the party to procure such testimony or witness, not to exceed ninety days, and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice. At whose cost.

SECTION 19. If a cause, commenced by summons, be adjourned on application of the defendant, he shall, if the plaintiff should request it, enter into a recognizance before the justice, with such security as the justice approves, in a penalty sufficient to secure the plaintiff's demand and costs, conditioned that if judgment be given against him in the suit, and execution be issued against his person, he will render himself up, on such execution before the return day thereof, or in default thereof, that he or his security will pay the judgment so recovered; and if the cause be adjourned on application of the plaintiff, he shall, if the defendant should request it, enter into a similar recognizance, in a sufficient penalty and under like condition. Bond in case of adjournment.

SECTION 20. If a cause commenced by warrant be adjourned on the consent of both parties, or on the application of the plaintiff, the defendant shall be discharged from custody, but the cause shall not be discontinued by such discharge, and at the adjourned day the same proceedings shall be had as on the return of a summons duly served. When defendant to be discharged.

SECTION 21. But if such cause be adjourned upon the application of the defendant, he shall continue during the time of the adjournment in custody of the constable, unless he shall enter into a recognizance before the justice, with such security as the justice approves, in a penalty sufficient to secure the plaintiff's demand and costs, conditioned that if judgment be given against him in the suit, and execution be issued against his person, he will render himself up on such execution before the return day thereof, or in default thereof that he or his security will pay the judgment so recovered. When to give security, and what.

SECTION 22. If any such recognizance shall have been given upon any prior adjournment, it shall not be necessary to enter into any new recognizance upon a subsequent adjournment, unless such recognizance be required by the justice, or the bail of the defendant in such prior recognizance.

SECTION 23. In any suit brought upon such recognizance, the plaintiff shall not be entitled to recover

unless he show an execution upon the judgment obtained in the suit in which such adjournment was had, duly issued within six days after the time when the same could have been issued against the person of the defendant, and a return thereon that such defendant could not be found.

## ARTICLE 5.

### OF WITNESSES AND DEPOSITIONS.

Distance to which a subpoena may be sent.

SECTION 1. A subpoena, issued by a justice of the peace, shall be valid to compel the attendance in a justice's court, of a witness being in the same county where the cause is to be tried, or being in an adjoining county and within fifty miles of the place of trial.

By whom, and how served.

SECTION 2. A subpoena may be served, either by a constable or any other person, and it shall be served by reading it to the witness or by delivering to him or leaving a copy thereof, at his usual place of abode.

Attachment.

SECTION 3. Whenever it shall appear to the satisfaction of the justice, by proof made before him, that any person, duly subpoenaed to appear before him in a suit, shall have failed without just cause to attend as a witness, in conformity to such subpoena, and the party in whose behalf such subpoena was issued, or his agent, shall make oath that the testimony of such witness is material, the justice shall have power to issue an attachment to compel the attendance of such witness: *provided, however,* that no attachment shall issue against a witness unless his mileage and one day's attendance has been tendered or paid in advance if previously demanded by such witness from the person serving such subpoena.

Previas.

How executed, and at whose cost.

SECTION 4. Every such attachment may be directed to any constable of the county in which the justice resides, and shall be executed in the same manner as a warrant; and the fees of the officers for issuing and serving the same, shall be paid by the person against whom the same was issued, unless he show reasonable cause, to the satisfaction of the justice, for his omission to attend, in which case the party requiring such attachment shall pay all costs of such attachment.

SECTION 5. Every person, duly subpoenaed as a

witness, who shall not appear, or who, when he shall appear, shall refuse to give testimony, shall forfeit for the use of the county in which he is subpoenaed to appear, (unless some reasonable excuse shall be shown on his oath or the oath of some other person) a fine not exceeding ten dollars, as the justice shall think reasonable to impose. And the justice shall make an entry of the conviction in his docket, and of the cause thereof, at the expiration of thirty days from the entry of such conviction, shall be deemed a judgment in all respects at the suit of such county, and execution shall be issued thereon, as upon other judgments in a justice's court, and the constable shall pay the fine to the treasurer of the county

Penalty for not appearing.

SECTION 6. The person upon whom such fine shall be imposed, may at any time before the expiration of thirty days, appear before the justice, and show cause against the imposition thereof, and upon the hearing of such cause the justice may remit or mitigate such fine.

May be remitted.

SECTION 7. Every person subpoenaed as aforesaid, and neglecting to appear, shall also be liable to the party in whose behalf he may have been subpoenaed, for damages which such party may have sustained by his non-appearance.

Farther liability.

SECTION 8. Either party in any civil suit depending before a justice, may, upon notice, cause the deposition of any witness therein to be taken by any judge or justice of the peace of any county in this territory where the said witness may be.

Depositions may be taken.

SECTION 9. No such deposition shall be taken, unless notice in writing, of the time and place of taking the same, shall have been served on the other party three days before the taking thereof, with one additional day, for every twenty five miles of distance, from the place of such service to the place of taking.

Notice necessary.

SECTION 10. Such notice may be served in like manner as an original summons, and the service may be on the party or his agent in the suit, and when such party resides out of the county, and has no agent in the suit therein, the service of such notice may be by filing a copy thereof, with the justice before whom the suit is pending.

How served.

SECTION 11. The deposition shall be taken and certified according to the statute of this territory regu-

Deposition, how certified.

lating the taking of depositions, and shall be sealed up and returned so sealed to the justice before whom the suit in which it is taken is pending; and when such deposition is taken out of this territory, the official character of the officer by whom it is taken, shall be certified under the seal of the state or county where such deposition is taken, or under the seal of some court therein.

When deposition may be used.

SECTION 12. The justice shall allow every deposition, taken and returned according to the provisions of this act, to be read on the trial of the cause in which it is taken, in all cases where the same testimony if given verbally in court could have been received, but no such deposition shall be read on the trial, unless it appear to the justice that the witness whose deposition is offered,

First. Is dead or resides out of the county; or

Second. Is unable to or cannot safely attend before the justice, on account of sickness, age or other bodily infirmity; or,

Third. Has gone out of the county without the consent or collusion of the party offering the deposition.

## ARTICLE 6.

### OF JUDGMENTS ON NON-SUITS, AND BY DEFAULT, AND OF TRIALS.

Proceedings when the defendant does not appear.

SECTION 1. When a defendant who has been duly served with process, and when a defendant who has once appeared to a suit, the trial of which has been adjourned, shall neglect to appear within three hours after the return time of the process or the adjourned time, the justice shall proceed in the cause in the following manner :

First. If the suit be founded on an instrument of writing, filed with the justice at the commencement of the action and purporting to have been executed by the other party, and the demand of the plaintiff is liquidated by such instrument, the justice shall, whether the plaintiff appear or not, render judgment against the defendant by default for the amount which shall appear by such instrument to be due to the plaintiff, after allowing all proper discounts for all payments endorsed thereon with costs.

Second. If the suit be not founded on an instrument of writing, as is declared in the preceding clause of this section, and the plaintiff appears in person or by his agent, the justice shall proceed to hear allegations and proofs and shall determine as the very right thereof shall appear from the testimony. And if it appear from such testimony that the plaintiff is entitled to recover, judgment shall be rendered by default against the defendant for so much as the testimony shows the plaintiff entitled to recover together with costs. If it do not appear that the plaintiff ought to recover, judgment shall be given for the defendant as upon a verdict against the plaintiff with costs.

Third. If the plaintiff fail to appear, except where the suit is founded upon an instrument of writing, as is declared in the first clause of this section, the justice shall render judgment of non-suit against the plaintiff with costs.

When the plaintiff does not appear.

SECTION 2. In all cases not otherwise specially provided for, if the plaintiff fail to appear in person or by agent within three hours after the time appointed for the trial of the cause, the justice shall render judgment of non-suit against him with costs.

SECTION 3. Every justice of the peace shall have power, on the application of the aggrieved or his agent, and for good cause shown, to set aside judgment of non-suit and by default, upon such terms as shall be just. Every such application shall be made within six days after rendering of the judgment, and if in the mean time any execution has been issued, the justice may revoke the same in the manner hereinafter provided for revoking an execution after an appeal has been allowed, and with like effect. The justice shall in all cases make an entry in his docket of every such application and of the day on which it was made together with his orders thereon.

When judgment may be set aside, and how.

SECTION 4. If any judgment be set aside and a new trial granted the justice shall fix a time for such trial and make out under his hand a notice to the opposite party, stating the fact that such judgment has been set aside and specifying therein the time and place fixed for trial. The notice shall be served on the party or his agent six days before the trial and shall be executed and returned in like manner as a summons and the same fees allowed therefor.

New trial.

**SECTION 5.** Every suit instituted by summons or warrant shall be determined on the return of the process duly served unless the cause be adjourned.

Mode of trial.

**SECTION 6.** When both parties appear before the justice in person or by agent at the time appointed for the trial of the cause, the justice shall proceed to hear the allegations and proofs of the parties and to determine the suit as the very right of the case shall appear.

Want of consideration in a bond or note may be shown.

**SECTION 7.** On the trial of all suits upon contracts before any justice of the peace, or in any district court by appeal or otherwise, whether brought by the original claimant or any person for his use or by the payee or obligee of any bond or note or his assignee, it shall be the duty of said justice or court to hear and determine such cause on its merits and to hear parol or other legal evidence to impeach the consideration or validity of any bond or note; and if it shall be ascertained by the justice or court, or verdict of the jury, (if one be required) that the consideration of such bond or note has failed, in whole or in part, judgment shall be given according to the finding of the justice or court, or verdict of the jury, notwithstanding the defendant may hold a warranty or other instrument of writing on the payee or obligee of such bond or note, purporting to be an agreement to make good the consideration of said bond or note, if the same should fail.

Jury may be demanded.

**SECTION 8.** Before the justice shall commence an investigation of the merits of the cause, by an examination of witnesses, or the hearing of any other testimony, either of the parties may demand of the justice that the cause be tried by a jury.

Number thereof.

**SECTION 9.** The jury shall consist of six persons, but the parties may agree upon any number of jurors less than six to try the cause, and in that case the jury shall consist of such number not exceeding six, as the parties may agree upon.

How summoned.

**SECTION 10.** The justice shall issue a summons, directed to the constable of the township wherein the cause is to be tried, commanding him to summons six (or such less number as the parties may have agreed upon) good and lawful men of the township, qualified to serve as jurors in the district court of the same county, who shall be nowise of kin to either party,

nor interested in the suit, to appear before the said justice at a time and place to be named therein, to make a jury for the trial of the action between the parties named therein.

SECTION 11. The constable shall execute such jury summons fairly and impartially, and shall not summon any persons whom he has reason to believe are biased or prejudiced for or against either of the parties. He shall summon the jurors personally, and shall make a list of the persons, which he shall certify and annex to the summons, and return to the justice. If a sufficient number of competent jurors cannot be obtained from the panel returned, the constable shall immediately summon others to serve in their place.

SECTION 12. If the constable, to whom the jury summons shall have been delivered, do not return the same as thereby required; or if a full jury be not obtained, in the manner declared in the preceding sections, the justice shall issue a new jury summons.

SECTION 13. To each juror the justice shall administer an oath, well and truly to try the matter in difference between \_\_\_\_\_ plaintiff, and \_\_\_\_\_ defendant, and unless discharged (by the justice) a true verdict give according to the evidence. Oath.

SECTION 14. After the jury are sworn, they shall sit together and hear the allegations and proofs of the parties, which shall be delivered publicly in their presence.

SECTION 15. If a witness on being produced shall be objected as being incompetent, such objection shall be tried and determined by the justice. Every person offered as a witness before any testimony shall be given by him, shall be duly sworn or affirmed, that the evidence he shall give relating to the matter in issue between \_\_\_\_\_ plaintiff, and \_\_\_\_\_ defendant, shall be the truth, the whole truth and nothing but the truth. Oath of witnesses.

SECTION 16. If there shall be no evidence given to establish any demand founded upon contract, or to establish any set-off, or if the evidence given be insufficient for that purpose, the justice may, upon the application of the party offering such demand or set-off, order the opposite party to be sworn in relation thereto; if the party thus required refuse to testify, the justice shall allow the party offering such demand or Oath of parties.

set-off, to be sworn and examined, in relation to the same matter. After an examination of either party, no further evidence shall be given in relation to such demand or set-off.

When to be subpoenaed.

**SECTION 17.** Either party in any suit founded on contract, may cause the opposite party to be subpoenaed as a witness in the cause, in the same manner and with like effect, as any other person. If the party after being duly subpoenaed, fail to attend the trial personally, and such failure be not accounted for, the justice may allow the other party to be sworn and examined as a witness, in all cases, and with like effect, as if the subpoenaed party had been personally present and had refused to testify.

When the execution of a written instrument must be denied on oath.

**SECTION 18.** If any suit or set-off be founded upon an instrument of writing, purporting to have been executed by the opposite party, and the same shall have been filed with the justice according to the preceding provisions of this act, such instrument shall be received in evidence upon the trial, unless the party (before the jury be sworn or the trial submitted to the justice,) charged to have executed the same, shall deny the execution thereof on oath, taken before such justice, or by an affidavit filed with the justice and taken before any court or officer authorized to administer oaths.

Except in case of executors, &c.

**SECTION 19.** The preceding section shall not be construed to authorize any instrument of writing to be received in evidence, without proof of its execution, against an executor or administrator, or any other person representing the person charged to have executed such instrument.

**SECTION 20.** When the jurors have agreed on their verdict, they shall deliver the same to the justice publicly, who shall enter it on his docket.

When jury may be discharged.

**SECTION 21.** Whenever a justice shall be satisfied that a jury sworn in any civil cause before him, after having been out a reasonable time, cannot agree on their verdict, he may discharge them and issue a new jury summons, unless the parties consent that the justice may render judgment on the evidence before him, which in such case he may do, unless they consent that the trial upon a new hearing of the evidence shall be by the justice.

**SECTION 22.** Every person who shall be duly sum-

moned as a juror, and shall not appear, nor render a reasonable excuse for his default, shall be subject to the same fine, to be prosecuted for, and collected with costs in the same manner, and applied to the same use, as herein before provided in respect to a person subpoenaed as a witness and not appearing.

Penalty for non-attendance as juror.

## ARTICLE 7.

### OF JUDGMENTS AND FILING TRANSCRIPTS THEREOF AND OF THE STAY OF EXECUTIONS.

SECTION 1. A justice of the peace may enter judgment, by confession of the defendant, in any case where the amount confessed does not exceed the amount a justice is authorized to render judgment in an action.

Judgment by confession.

SECTION 2. No confession shall be taken, or judgment rendered thereon, unless the following requisites be complied with :

1st. The defendant must personally appear before the justice.

2d. The confession must be in writing, signed by the defendant, or by some person by him thereto lawfully authorized, and filed with the justice.

SECTION 3. If there be mutual justices judgments between the same parties, upon which the time for appealing has elapsed, on which there is no existing execution, one judgment on the application of either party and reasonable notice given of such application, to the adverse party, may be set off against the other, by the justice before whom the judgment, against which the off-set is proposed, may be.

Setting off of judgments.

SECTION 4. If the judgment proposed as a set-off, was rendered before another justice, the party proposing such set-off, must produce before the justice a transcript of such judgment, upon which there is a certificate of the justice rendering the judgment, that there is no appeal or existing execution thereon, and such transcript was obtained for the purpose of being set off against the judgment to which it is offered as a set-off. The justice granting such transcript, shall make an entry thereof in his docket, and all further proceedings on such judgment shall be stayed, unless such transcript shall be returned with the proper

When the judgments were before different justices.

justice's certificate thereon, that it has not been allowed in set-off.

Other provisions.

**SECTION 5.** If any justice shall set off one judgment against another, he shall make an entry thereof in his docket, and execution shall issue only for the balance which may be due after such set-off. If a justice shall allow a transcript of a judgment, rendered by another justice, to be set off, he shall file such transcript among the papers relating to the judgment, in which it is allowed in set-off. If he shall refuse such transcript as a set-off, he shall so certify on the transcript, and return the same to the party who offered it.

When the justice is a witness, &c. cause to be discontinued.

**SECTION 6.** If upon the appearance of the parties on the return of process in any case, (except when the defendant is arrested by warrant) the defendant shall, before the jury is sworn, or the trial submitted to the justice, make affidavit that the justice before whom the same is pending is a material witness for such defendant, without whose testimony he cannot safely proceed to trial, or that he is of near kin to the plaintiff, stating therein in what degree, judgment shall be entered that the cause be discontinued but without costs to either party.

Judgment of non-suit.

**SECTION 7.** Judgment of non-suit with costs shall be rendered against the plaintiff in the following cases in addition to the cases specially provided for.

1st. If he withdraw his action.

2d. If he be non-suited upon the trial.

Judgment for defendant.

**SECTION 8.** Judgment for the defendant with costs shall be rendered, wherever a trial or hearing has been had, and no sum shall be found by the verdict of the jury, or by the decision of the justice in favor of the plaintiff.

For plaintiff.

**SECTION 9.** Judgment for plaintiff with costs shall be rendered, whenever a trial or hearing has been had, and any sum shall be found by the verdict of the jury, or decision of the justice in favor of the plaintiff.

How soon judgment to be rendered.

**SECTION 10.** In cases where the plaintiff shall be non-suited, or withdraw his action, and where judgment shall have been confessed; and in all cases where a verdict shall be rendered, or the defendant shall be in custody at the time of hearing the cause, the justice shall forthwith render judgment, and enter

the same in his docket. In all other cases he shall render judgment and enter the same in his docket, within three days after the cause shall have been submitted to him for his decision.

SECTION 11. If any sum be found in favor of a party, either by a verdict of jury, or upon hearing of the cause before a justice, exceeding the sum for which a justice is authorized to give judgment, such party may remit and release the excess, and take judgment for the residue.

SECTION 12. The execution upon a judgment rendered by a justice of the peace, may be stayed in the manner hereinafter provided, and for the following periods of time, to be calculated from the date of the judgment: <sup>Stay of execution.</sup>

1st. If the judgment be for a sum not exceeding ten dollars exclusive of costs, three months.

2d. If it be for any sum above ten dollars and not exceeding thirty dollars, six months.

3d. If it be for any sum above thirty dollars exclusive of costs, nine months; but if all the parties to the judgment agree upon any other time the stay shall be for the time so agreed upon.

SECTION 13. To entitle any person to such stay of execution, some responsible person, to be approved by the justice, and not being a party to the judgment, must within five days after the rendering of the judgment, enter into a recognizance before the justice, to the adverse party, in a sum sufficient to secure the payment of the judgment and costs, conditioned to be void upon such payment at the expiration of the stay. <sup>Security.</sup>

SECTION 14. Such recognizance must be signed by the party entering into the same, and may be in the following form: "I \_\_\_\_\_ acknowledge myself indebted to \_\_\_\_\_ in the sum of \_\_\_\_\_ dollars to be void upon this condition: whereas \_\_\_\_\_ obtained judgment before \_\_\_\_\_, a justice of the peace of \_\_\_\_\_ township, in \_\_\_\_\_ county, on the day of \_\_\_\_\_, 18—, against \_\_\_\_\_; now if such judgment shall be paid at the expiration of \_\_\_\_\_ months from the time it was rendered, this recognizance shall be void. A. B." <sup>Form of recognizance.</sup>

SECTION 15. If at the expiration of such stay the judgment be not paid, the execution shall issue against <sup>Execution, how levied.</sup>

both principal and bail, if the principal do not satisfy the execution, and the officer cannot find sufficient property belonging to him upon which to levy, he shall levy upon the property of the bail, and in his return shall state what amount of the money collected by him on the execution was collected by him from the bail, and the time when the same was received.

**Remedy of the bail.**

**SECTION 16.** After the return of such execution, the bail shall be entitled, upon motion, to a judgment before the justice, for the amount collected from him in satisfaction of such execution, with interest thereon at twelve per cent. per annum; and such return of the officer upon motion shall be evidence of the facts therein stated. No motion shall be made after three months from the return of the execution.

**When execution to be revoked.**

**SECTION 17.** If a judgment be stayed in the manner above prescribed, after an execution has been issued thereon, the justice shall revoke such execution, in the same manner and with like effect as he is hereinafter directed to revoke an execution after an appeal has been allowed.

**How justice's judgment made a lien upon real estate.**

**SECTION 18.** Every justice, on the demand of any person in whose favor he shall have rendered judgment for more than ten dollars exclusive of costs, shall give to such person a certified transcript of such judgment; and the clerk of the district court of the same county in which the judgment was rendered, shall upon the production of any such transcript file the same in his office, and forthwith enter such judgment in the docket of the district court judgments and decrees, and shall note therein the time of filing of such transcript.

**SECTION 19.** Every such judgment, from the time of such filing of the transcript thereof, shall have the same lien on the real estate of the defendant in the county, as a judgment of the district court of the same county, shall be equally under the control of the district court, and shall be carried into execution in the same manner, and with the like effect as the judgment of such district court; but no execution shall be issued thereon out of the district court, until an execution shall have been issued by a justice, and returned that the defendant has no goods or chattels whereon to levy the same.

## ARTICLE 8.

## OF EXECUTIONS AND PROCEEDINGS THEREON.

SECTION 1. Upon every judgment rendered by a justice, execution shall be issued by such justice in the manner hereinafter prescribed, at any time upon demand.

SECTION 2. The execution shall be directed (except where it is otherwise specially provided) to the constable of the township where the justice resides, shall be dated on the day it was issued, and be made returnable within thirty days from the date; it shall be against the goods and chattels of the person against whom the same was issued.

SECTION 3. The execution against the goods and chattels of the person against whom the same was issued, shall command the officer to levy the debt, damages and costs of the goods and chattels of such person, and make due return thereof.

SECTION 4. Before any execution shall be delivered, the justice shall state in his docket, and also on the back of the execution, an account of the debt, damages and costs, and of the fees due to each person separately; and the officer receiving such execution, shall indorse thereon the time of the receipt of the same.

SECTION 5. In all cases where it shall be known to the justice that the defendant resides out of the township, if there be more than one in the county where the judgment was rendered, or that he has not sufficient goods and chattels therein to satisfy such judgment, the justice shall issue the execution directed to the constable of any township in the same county wherein the defendant or his goods and chattels are to be found.

SECTION 6. If any execution be not satisfied, it may at the request of the plaintiff be renewed from time to time, by the justice issuing the same, by an indorsement thereon to that effect, signed by him, and dated when the same shall be made. If any part of such execution has been satisfied, the indorsement of renewal shall express the sum due on the execution. Every such indorsement shall renew the execution in full force in all respects for thirty days and no longer,

and an entry of such renewal shall be made in the docket of the justice.

Notice of sale.

SECTION 7. The constable after taking goods and chattels into his custody, by virtue of an execution, shall, without delay, give public notice, by at least three advertisements, put up at three public places in the township, of the time and place when and where they will be exposed to sale. Such notice shall describe the goods and chattels taken, and shall be put up at least ten days before the day of sale.

Goods, how sold.

SECTION 8. At the time so appointed, if the goods and chattels be present for the inspection of the bidders the officer shall expose them to sale at public vendue to the highest bidder. He shall return the execution, and have the money before the justice at the time of making such return, ready to be paid over to the persons respectively entitled thereto.

Officer forbidden to purchase.

SECTION 9. No constable or other officer, shall directly or indirectly purchase any goods or chattels at any sale made by him upon execution, but every such sale shall be absolutely void.

When garnishees may be summoned.

SECTION 10. If the goods or chattels so levied on, are not sufficient to satisfy such execution, the constable shall, upon the demand of the plaintiff, summon in writing as garnishees, such debtors of the defendant in execution as may be named to him by the plaintiff or his agent, to appear before the justice on the return day of the execution, to answer such interrogatories as may be exhibited against them, touching their indebtedness to such defendant; and the like proceedings shall be had therein, before the justice, to final judgment and execution, as in suits instituted by attachment in a justice's court.

Proceedings when property claimed.

SECTION 11. If a constable levy an execution on any goods or chattels, and any person other than the defendant in execution claims such property, the constable shall give notice forthwith to some justice of the peace of the same township, in which notice he shall set forth the names of the plaintiff and defendant, in execution and the name of the person claiming, and also a schedule of the property claimed.

Jury summoned.

SECTION 12. It shall be the duty of such justice, immediately upon the receipt of such notice, to issue a jury summons, directed to the constable of the township, commanding him to summon six disinterested

persons having the qualifications of electors, to appear before him at a time therein mentioned, which shall not be more than three days after the date of the said summons, to try and determine the right of property between the defendant in the execution, and the person so claiming.

SECTION 13. The justice shall also give notice to the plaintiff in the execution, his agent or attorney, if any, and the said notice shall be directed to the constable, and served and returned in the same manner as a summons.

SECTION 14. The justice shall administer the following oath to the jurors: "You and each of you do solemnly swear (or affirm) that you will well and truly try, and determine, the right of property, between ——— claimant, and ——— defendant in execution, to the goods and chattels in controversy, and a true verdict give according to evidence given before you." And the jury so sworn shall be the judges of the law and the fact. Oath.

SECTION 15. If the jury find the goods and chattels, or any part of them, to be the property of the defendant in execution, the verdict shall, as against the claimant, justify the officer in selling such goods and chattels as the jury have so found. If the verdict is for the claimant, the plaintiff in the execution shall pay the costs in the trial, if it is against the claimant, the costs shall be paid by such claimant; and the jurors, constable, and witnesses, shall be entitled to like fees as for other services in a justice's court. Effect of the verdict.

SECTION 16. The constable of the township, shall receive all money that may be tendered to him in payment of any judgment obtained before any justice of the peace of such township, and shall give the person paying the same a receipt therefor, in which shall be specified on what account the same was paid. And the payment shall be valid against the judgment, and upon the production of the receipt to the justice shall be credited thereto. The person entitled to the money paid, shall have the like remedies against the constable, and his securities, for the recovery thereof, as if such money was collected by the constable in execution. Money paid to constable sufficient,

SECTION 17. No payment of money upon a judgment, made to the justice, either before or after execu- but not if paid to justice.

tion thereon, shall be valid against such judgment, nor credited thereto, unless paid to the order of the person to whom the money is due.

Proceedings  
against the con-  
stable, what and  
when.

SECTION 18. In the following cases, the justice shall, upon the demand of the party injured or his agent, issue a summons against any constable to whom any execution has been delivered, or who has received any money upon any judgment of such justice, whether with or without execution:

First. If the constable fail to make return of the execution according to the command thereof.

Second. If he make a false return.

Third. If he fail to have any money by him collected on execution, before the justice, on the return day thereof, ready to be paid over to the persons entitled thereto, or the receipts of such persons therefor.

Fourth. If he fail to pay over upon demand to the person entitled thereto, or his agent, any money by him received in payment of any judgment.

SECTION 19. Such summons shall require the constable to appear before the justice, at a place and time to be specified therein, not exceeding six days from the time of issuing the same, and show cause, why execution shall not issue against him for the amount due upon the execution, or for the amount received by him upon the judgment, according to the nature of the case. The summons shall be served at least three days before the return day thereof, and may in other respects be executed in like manner as an original writ of summons.

SECTION 20. If the constable fail to appear, or appearing, fail to show good cause to the contrary, the justice shall render judgment against him for the amount due by the execution, or for the amount received by him without execution, according to the nature of the case, together with interest thereon, at the rate of one hundred per centum per annum, from the time such execution ought to have been returned, or from the time such money ought to have been had before the justice, ready to be paid over to the person entitled thereto; or from the time the money received on a judgment without execution was demanded by the party entitled thereto or his agent. Upon such judgment there shall be no stay of execution, but an appeal may be had as in other cases and with like effect.

SECTION 21. The party injured, may proceed in the manner above directed, or may institute a suit against the constable and his securities on his official bond, and in such suit the plaintiff shall be entitled to like recovery, as upon a summons against the constable; and suits on such bond may be brought before a justice of the peace, when the amount claimed does not exceed the jurisdiction of a justice of the peace.

## ARTICLE 9.

### OF APPEALS AND PROCEEDINGS THEREON IN THE DISTRICT COURT.

SECTION 1. Any person aggrieved by any judgment rendered by a justice of the peace, except judgment for non-suit, may, in person or by his agent, make his appeal therefrom to the district court of the same county where the judgment was rendered.

SECTION 2. But no appeal can be taken from a judgment by default, unless within six days after the rendering of such judgment, application shall have been made to the justice by the party aggrieved to set the same aside and such application shall have been refused.

SECTION 3. No appeal shall be allowed in any case unless the following requisites be complied with: Requisites of an appeal.

First. The appeal must be made within six days after the judgment is rendered, or, when the judgment is by default, within six days after the refusal of the justice to set aside the default and grant a new trial.

Second. The applicant, or some person for him, together with one or more securities, to be approved by the justice, must, within the time prescribed in the first clause of this section, enter into a recognizance before the justice to the adverse party, in a sum sufficient to secure such judgment and the costs of the appeal, conditioned that the applicant will prosecute his appeal with due diligence to a decision; and that if on such appeal the judgment of the justice be affirmed, or if on trial anew in the district court judgment be given against him, he will pay such judgment and if his appeal be dismissed, he shall pay the judgment of the justice, together with the costs of the appeal.

SECTION 4. Such recognizance must be signed by

Form of recog-  
nizance.

the parties entering into the same, and be attested by the justice and may be in the form following: "We the undersigned \_\_\_\_\_ and \_\_\_\_\_ acknowledge ourselves indebted to \_\_\_\_\_ in the sum of \_\_\_\_\_ dollars, to be void upon this condition: Whereas \_\_\_\_\_ has appealed from the judgment of \_\_\_\_\_ a justice of the peace, in an action between \_\_\_\_\_ plaintiff, and \_\_\_\_\_ defendant, now if on such appeal, the judgment of the justice be affirmed, or if on the trial anew in the district court, judgment be given against the appellant, and he shall satisfy such judgment, or if the appeal be dismissed, and he shall pay the judgment of the justice together with the costs of appeal, the recognizance shall be void.

C. D.  
E. F.

Attest,

G. H. justice.

Appeal to sus-  
pend all further  
proceedings.

SECTION 5. Upon an appeal being made according to the foregoing provisions, the justice shall allow the same, and make an entry of such allowance in his docket; and all further proceedings on the judgment before the justice, shall be suspended, by the allowance of the appeal, and if in the mean time execution shall have been issued, the justice shall give to the appellant a certificate that such appeal has been allowed.

SECTION 6. On such certificate being presented to the constable holding the execution, he shall forthwith release the body and property of the defendant, that may have been taken in execution, and if the appellant shall have been committed to jail, the jailor, upon the service of the like certificate on him, shall release the appellant from imprisonment.

Transcript to be  
filed.

SECTION 7. On or before the first day of the term of the district court next after the appeal shall have been allowed, the justice shall file, in the office of the clerk of said court, a transcript of all the entries made in his docket, relating to the case, together with all the process and other papers relating to the suit and filed with the justice.

SECTION 8. Upon the return of the justice being filed in the clerk's office, the court shall be possessed of the cause, and shall proceed to hear, try and determine the same anew, without regarding any error, defect, or other imperfection, in the proceedings of the justice.

SECTION 9. Upon an appeal being made and allowed, the district court may by rule and attachment, compel a return by the justice of his proceedings in the suit, and of the papers required to be by him returned. Return how compelled.

SECTION 10. If a justice fail to allow an appeal, in a cause where the same ought to have been allowed, the district court on such fact satisfactorily appearing, may by rule and attachment compel the justice to allow the same, and to return his proceedings in the suit, together with all papers required to be returned by him.

SECTION 11. Whenever the court is satisfied that the return of the justice is substantially erroneous, or defective, the court may by rule and attachment compel him to amend the same. Amendment thereof.

SECTION 12. No appeal allowed by a justice shall be dismissed on account that there is no recognizance, or that the recognizance given is defective, if the appellant will, before the motion to dismiss is determined, enter, before the district court, into such recognizance as he ought to have entered into before the allowance of the appeal, and pay all costs that shall be incurred by reason of such defect or omission.

SECTION 13. All appeals allowed ten days before the first day of the term of the district court next after the appeal allowed, shall be determined at such term unless continued for cause.

SECTION 14. If the appeal be not allowed on the same day, on which the judgment is rendered, the appellant shall give the appellee at least ten days' notice, in writing, before the sitting of the court at which the cause is to be determined, stating the fact that an appeal has been taken from the judgment therein specified. The notice may be served in like manner as an original writ of summons, and when the appellee does not reside in the county, and has no agent in the suit, therein, the service may be by leaving a copy of such notice with the justice. When notice given.

SECTION 15. If the appellant fails to give notice of his appeal in a cause where notice is required, the cause shall on the application of the appellee be continued as a matter of course, until the succeeding term, at the costs of the appellant, but no appeal shall be dismissed for want of such notice. Consequence of failure.

SECTION 16. The same cause of action, and no

other, that was tried before the justice, shall be tried in the district court upon the appeal; and no set-off shall be pleaded in the district court that was not pleaded before the justice, if the summons was served on the person of the defendant.

SECTION 17. In all cases of appeals from a justice's court, if the judgment of the justice be affirmed, or if on a trial anew in the district court, the judgment be against the appellant, such judgment shall be rendered against him and his sureties in the recognizance for the appeal.

When execution enforced against security.

SECTION 18. If upon an execution being issued upon such judgment, the principal shall not pay such execution, and the officer cannot find sufficient property of such principal to satisfy the same, such execution shall be enforced against the securities; and the officer shall specify in his return by whom the money was paid and the time thereof.

His indemnification.

SECTION 19. After the return of an execution, satisfied, in whole or in part, out of the property of the security, such security shall be entitled to a judgment upon motion against the principal, for the amount so paid by him, together with interest at twelve per cent. per annum, from the time of payment; such motion must be made within one year after the return day of the execution, and the return of the officer shall be evidence upon the hearing of such motion of the facts therein stated.

## ARTICLE 10.

### REGULATING THE ACTION OF REPLEVIN.

When to be brought.

SECTION 1. Whenever any goods or chattels are wrongfully taken, or wrongfully detained, (the value of which shall not exceed fifty dollars) an action of replevin may be brought by the person having a right to the immediate possession, for the recovery thereof, and for the recovery of the damages sustained by reason of the unjust caption or detention, except as hereinafter specified.

SECTION 2. No cross replevin or replevin for property in the possession of an officer by virtue of any legal authority, shall be brought.

SECTION 3. No writ of replevin shall be issued,

unless the plaintiff files with the justice, the affidavit Previous oath. of himself or of some credible person, stating that the plaintiff is lawfully entitled to the property mentioned in the declaration, that the same was wrongfully detained by the defendant, and that the plaintiff's right of action has accrued within one year.

SECTION 4. The writ of replevin shall command the officer to whom it is directed, to cause (if the plaintiff gives the security required by law) the goods and chattels mentioned in the declaration, to be delivered to the plaintiff without delay, and to summon the defendant to appear before the justice on the return day of the writ, and answer the plaintiff in the premises. Substance of the writ.

SECTION 5. No writ of replevin shall be executed until the plaintiff enters into a bond to the officer to whom the writ is directed, with sufficient security, in double the value of the property, to be ascertained by the officer, conditioned that he will prosecute the suit with effect, and without delay make return of the property, if the return thereof be adjudged, and keep harmless the officer touching the replevying the property. Bond.

SECTION 6. Upon the receipt of the writ, and the bond required by this article, the officer shall without delay execute the writ, by causing the property mentioned in the declaration to be delivered to the plaintiff, and by summoning the defendant according to the tenor of the writ. Writ, how executed.

SECTION 7. The defendant may plead that he is not guilty of the charge alleged against him, and this plea shall put in issue not only the right of the plaintiff to the possession of the property mentioned in the declaration, but also the wrongful taking and detention thereof. Effect of plea of "not guilty."

SECTION 8. If a plaintiff in replevin fails to prosecute his suit with effect and without delay, the justice or jury, shall assess the value of the property taken, and the damages for the use of the same, from the time of suing the same, until return thereof shall be made as in other like cases. If the plaintiff fails to prosecute with effect.

SECTION 9. In such case the judgment shall be against the plaintiff and his sureties, that he return the property taken, or pay the value so assessed, and

also pay double the damages assessed for the detention of property.

**Other liabilities.** SECTION 10. If an officer is injured by reason of taking any property by virtue of a writ of replevin, by the direction of the plaintiff, he may maintain an action therefor upon the bond by him taken.

SECTION 11. If the plaintiff violates the condition of this bond, the defendant may sue thereon, in the name of the officer to the use of said defendant.

**Liability of officer.**

SECTION 12. If the officer fails to take a bond of the plaintiff, and return the same as is required by this article; or if the bond taken be adjudged insufficient by the justice, on the return of the writ, and the plaintiff fails to perfect it, if required, the officer shall be liable to the party injured for all damages by him sustained, to be recovered by action of debt on the officer's official bond, or by an action on the case.

## ARTICLE 11.

### OF ATTACHMENTS.

**Cases in which attachments may issue.**

SECTION 1. Creditors whose demands amount to not more than fifty dollars, and not less than five dollars, may sue their debtors by attachment, before a justice of the peace, in the following cases:

1st. Where the debtor is not a resident of, nor residing within the territory.

2d. Where the debtor has absconded, or concealed himself, or so absented himself from his usual place of abode, that the ordinary process of law cannot be served upon him.

3d. Where the debtor is about to remove his property out of the territory, so as to hinder and delay his creditors.

4th. Where there is good reason to believe that the debtor is about fraudulently to remove, convey or dispose of his property or effects, so as to hinder or delay his creditors.

**How issued.**

SECTION 2. Any such creditor, wishing to sue his debtor by attachment, may apply to any justice of the peace, who would have jurisdiction of the debt if the suit was brought in the common form, and if the cause of action be a bond or note, shall file the same with the justice, and if it be any other kind of con-

tract, shall file with the justice a plain, intelligible account or statement thereof, together with the affidavit of himself or some other creditable person, stating that the defendant is justly indebted to him, after allowing all just off-sets and credits, in a sum above five dollars, showing the amount in the affidavit, and also stating the belief of the affiant of the existence of one or more of the facts, which, under the first section of this article, would entitle the plaintiff to sue by attachment; and thereupon the justice shall issue a writ of attachment against the property and effects of the defendant.

SECTION 3. Writs of attachment shall be issued and returned in like time and manner as ordinary writs of summons, and when the defendant is summoned to answer, the like proceedings shall be had between him and the plaintiff, as on ordinary actions on contracts, and a general judgment may be rendered for or against the defendant. And returned.

SECTION 4. The manner of serving writs of attachment shall be as follows: Manner of serving.

1st. The writ shall be served upon the defendant as an ordinary summons.

2d. Garnishees shall be summoned by the constable declaring them, that he does summon them to appear before the justice at the return day of the writ, to answer the interrogatories which may be put to them by the justice, and by reading the writ of attachment to them if required.

3d. When goods and chattels, money or evidences of debt, are to be attached, the constable shall seize the same and keep them in his custody, if accessible, and if not accessible he shall declare to the person in possession thereof, that he attaches the same in his hands, and summon such person as garnishee.

4th. When credits are to be attached, the constable shall declare to the debtor of the defendant, that he attaches in his hands all debts due from him to the defendant, or so much thereof as may be sufficient to satisfy the debt sued for, with interest and costs, and summon the debtor as garnishee.

SECTION 5. When property of the defendant, found in the hands or possession of any other person than the defendant, shall be attached, such person may retain the possession thereof, by giving bond and se- Bond.

curity to the satisfaction of the officer executing the writ, to the constable, his successors or assignees, in double the value of the property so attached, conditioned that the same shall be forthcoming when and where the justice shall direct, and shall abide the judgment of the justice.

By defendants.

**SECTION 6.** When property of the defendant shall be actually seized on attachment, the defendant or any person for him, may obtain possession thereof, without dissolving the attachment, by giving the officer a bond with good and sufficient security, in double the amount of property, conditioned that the property shall be forthcoming, when and where the justice shall direct, to abide the judgment which may be rendered in the cause.

Perishable property.

**SECTION 7.** When property shall be seized on attachment, which is likely to perish, or depreciate in value before the probable end of the suit, or the keeping of which would be attended with much loss or expense, the justice may order the same to be sold by the constable, in the same manner, and on the same notice, as goods are required to be sold on an execution, and the proceeds of such sale shall remain in the hands of the constable, subject to be disposed of as the property would have been if seized upon in specie.

Notice to defendant.

**SECTION 8.** When the defendant cannot be summoned and his property or effects shall be attached, if he do not appear to the action at the return of the writ, the justice shall enter an order on his docket, requiring the plaintiff to give notice to the defendant, by three written or printed advertisements, set up at three of the most public places in the county, that a writ has been issued against him, and his property attached to satisfy the demand of the plaintiff, and that unless he appear before the justice at his next law day, stating the time and place, judgment will be rendered against him, and his property sold to pay the debt.

**SECTION 9.** Such notices shall be set up at least twenty days before the next law day of the justice, and the setting up thereof may be proved, either by the return of the constable upon a copy of the notice, or by the affidavit of any person who would be a competent witness in the case.

Judgment by default.

**SECTION 10.** When the defendant shall be notified as aforesaid, and shall not appear and answer to the

action, judgment by default may be entered, which may be proceeded on to final judgment in like manner as in ordinary actions.

SECTION 11. Such judgments shall bind only the property and effects attached, and no execution shall issue thereon against any other property of the defendant, nor against his body, nor shall any action be brought thereon. Only binds the property attached.

SECTION 12. Attachments may be dissolved on motion made in behalf of the defendant, and at any time before final judgment in the following cases: How and when Attachments to be dissolved.

First. When the defendant shall appear and plead to the action, and give bond to the plaintiff with good and sufficient security, to be approved by the justice, in double the amount of the property, effects and credits attached, conditioned that such property, effects and credits shall be forthcoming, and abide the judgment which shall be rendered in the cause.

Second. When the defendant shall appear and plead to the action, and give like bond and security, in a sum sufficient to satisfy the debt sworn to in behalf of the plaintiff, with interest and cost of suit, conditioned that the defendant will pay to the plaintiff the amount which may be adjudged in favor of the plaintiff, interest and all costs of suit, on or before the next law day of the justice, after that at which judgment shall be rendered.

SECTION 13. When any attachment shall be dissolved, all proceedings touching the property and effects attached, and the garnishes, arrested or summoned, shall be vacated, and the suit proceed as if it had been commenced by a summons only. Effect thereof.

SECTION 14. When any garnishee shall appear before the justice to answer, the following interrogatories and none other shall be propounded to him, to answer under oath: Questions to be asked the garnishee.

First. At the time of the commencement of this suit, had you, in your possession or under your control, any goods, moneys or effects of the defendant? If so, state what property, how much, and of what value, and what money or effects.

Second. At the time of the commencement of this suit, did you owe the defendant any money, or do you owe him any now? If so, how much, on what ac-

count, and when did it become due, and if not yet due when will it be due?

SECTION 15. The justice shall write the answer of the garnishee to each interrogatory separately, and file the answer as a paper in the cause.

If the garnishee fail to appear, &c.

SECTION 16. If any garnishee, being duly summoned, fail to appear at the proper time, or appearing, fail to make full and direct answers upon oath to the interrogatories, the plaintiff may take judgment against him by default, may be proceeded on to final judgment in like cases between plaintiff and defendant; or at the option of the plaintiff, the justice shall attach the body of the garnishee, until he shall make full and direct answers to the interrogatories.

SECTION 17. No final judgment shall be rendered against the garnishee, until final judgment be had against the defendant.

Plaintiff may deny the answer of the garnishee.

SECTION 18. The plaintiff may deny the answer of the garnishee, or any part thereof, on the same day on which the answer is made, and the justice shall reduce to writing the denial, showing what part is denied and file it as a paper in the cause.

Trial in such case.

SECTION 19. All issues between the plaintiff and garnishee, shall be tried as ordinary issues between plaintiff and defendant, and costs may be adjudged for or against either party, as in ordinary cases; and if upon the trial of any such issue, property or effects shall be found in the hands of the garnishee, the justice or jury shall assess the value thereof, and the judgment shall be for the amount in money.

Garnishee may exonerate himself.

SECTION 20. Any garnishee, having property, money or effects of the defendant, may discharge himself by surrendering and paying the same, or so much thereof as shall be sufficient to cover the debt, interest and cost to the constable, and taking his receipt therefor, at any time before the final judgment against him.

Warrant, when issued.

SECTION 21. When any plaintiff, at the time he applies for an attachment, shall, in addition to the affidavit required by the second section of this article, file the affidavit of himself or of some credible person, stating that any particular person in the county, other than the defendant, has in his hands any property, money or effects of the defendant, or is indebted to the defendant, showing the kinds, quantity and value of the property, or the amount of the debt, (being above five

dollars) and stating such circumstances, as shall satisfy the justice that the debt of the plaintiff will be endangered, by reason that such person is about to remove or secrete the property, or if a debtor of the defendant, that he is about to abscond or leave the territory not to return, the justice shall issue his warrant, commanding the constable to arrest him, and bring such person forthwith before the justice.

SECTION 22. Such arrest shall be an attachment of the property and effects, money and credits, of the defendant in his hands, or due from him, and he shall be considered as a garnishee summoned to answer.

SECTION 23. Such garnishee on being brought before the justice, may at his option, enter into bond with good security, to be approved by the justice, in favor of the plaintiff, and in such sum as the justice shall consider reasonable, conditioned that he will appear at the return of the attachment, and upon oath make full and direct answers to the interrogatories which may be propounded to him, that he will abide the final judgment in the cause and pay whatever may be adjudged against him. Garnishee may give bail.

SECTION 24. But if such garnishee refuse or fail to give such bond, the justice shall require him to answer the interrogatories, and shall proceed without delay to determine the matter in controversy between the plaintiff and that garnishee. or otherwise.

SECTION 25. If it shall appear, either by the answer of the garnishee, or by the finding of the justice or a jury, that the garnishee has in his hands, property or effects of the defendant, the justice shall require him to give bond and security in favor of the plaintiff, in such sum as the justice shall direct, conditioned that the property or effects so confessed or found in his hands, and the debts so due from him, or the value thereof, shall abide the final judgment in the cause, and shall be produced and delivered when and where and to whom the justice shall appoint. When to give bond.

SECTION 26. In default of such bond, the justice shall commit the garnishee to the common prison until discharged by due course of law; nevertheless the garnishee may be discharged, by delivering and paying the property and money according to the provisions of the twentieth section of this article. How discharged from prison.

SECTION 27. If, at the hearing before the justice, it

When and what judgment in favor of the garnishee.

shall not be found that such garnishee has in his hands property or effects of the defendant, or is indebted to the defendant to the amount of five dollars, the garnishee shall be discharged, and judgment shall be rendered in his favor against the plaintiff for five dollars, and all costs consequent upon the warrant and execution shall issue therefor without delay.

Bond by the plaintiff.

SECTION 28. In cases where judgment is rendered against the defendant, upon publication of notice, without service of summons or his appearance to the action, no execution shall be awarded, either against the defendant or garnishee, or property attached, until the plaintiff or some person for him shall give bond and security in favor of the defendant, to be approved by the justice, in double the amount of the judgment, conditioned that if the defendant shall, within one year from the date of the bond, appear and disprove or avoid the debt or damages adjudged against him, or any part thereof, the plaintiff will pay and refund to the defendant all such money as shall have been received by, and not justly due to him, together with all such damages as shall be assessed.

How defendant may disprove the debt.

SECTION 29. The manner of disproving or avoiding the debt, shall be by petition to the justice who gave the judgment, or his successor, or to the courts into which the record and papers have been removed, stating the grounds on which he resists the claim of the plaintiff, giving to the plaintiff ten days notice of the time and place the petition will be presented.

SECTION 30. If the petition deny the original cause of action, and be supported by the oath of the petitioner, the plaintiff shall be required to prove his demand, and in default thereof it shall be adjudged to be disproved and avoided, and the plaintiff shall pay costs of the petition and of the original suit.

SECTION 31. If the petition allege a set-off, or other collateral avoidance, the petitioner shall be required to prove the same, and in default thereof shall be adjudged to pay costs, and a general judgment may be rendered against him for any balance remaining unpaid on the original judgment and the costs.

When and what executions to be issued.

SECTION 32. Executions may be awarded and issued on judgments in attachment causes, according to the circumstances of each case as follows:

First. Where there is a general judgment against

the defendant, the execution shall be a common fieri facias, which may be levied upon all the property of the defendant (subject to execution,) whether attached in the case or not.

Second. Where there is a special judgment against the property, money or effects attached, the execution shall be a special fieri facias against such property, money, or effects only, and may be levied upon the same whether in the hands of the officer, or secured by bond as provided for in this article.

Third. Where the judgment is against the garnishee, the execution shall be such as is used and allowed on general judgments in common actions on contracts.

SECTION 33. When property is seized on attachment, the justice may allow to the officer having charge thereof, such compensation for his trouble and expenses, in keeping and maintaining the same as shall be reasonable and just. Compensation to the officer.

## ARTICLE 12.

### PROCEEDINGS IN CASE OF BREACH OF THE PEACE.

SECTION 1. No assaults, battery, or affray, shall be indictable, but all such offenses shall be prosecuted and finished in a summary manner before justices of the peace as hereinafter provided. Offenses, when indictable and when not.

SECTION 2. The foregoing section shall not extend to the trial or punishment of any case of riot or unlawful assembly, nor to any assault with an intent to maim, nor an assault with intent to commit a rape, nor an assault with intent to commit robbery, nor an assault with intent to kill, nor shall it embrace the offenses of shooting at or stabbing, but all such offenses shall be punishable by indictment.

SECTION 3. Whenever a complaint shall be made to a justice of the peace, on the oath or affirmation of any person competent to testify, against the accused, that an assault, battery, affray or other breach of the peace has been, or is about to be committed, the justice shall forthwith issue his warrant for the arrest of the offender, which warrant shall be executed by the sheriff of the county, or the constable of the township, or by some competent person specially deputed by the justice for that purpose. Warrant, how issued.

When justice  
may arrest  
without  
affidavit.

**SECTION 4.** If any justice of the peace shall have any knowledge that any of the offenses mentioned in the last section are about to be committed, he shall issue his warrant, and proceed as is directed in that section, and if any such offense is committed, threatened or attempted in his presence, he shall immediately arrest the offender or cause it to be done, and for this purpose no warrant or process shall be necessary. But the justice may summon to his assistance any sheriff, coroner or constable, and all other persons there present, whose duty it shall be to aid the justice in preserving the peace, arresting and securing the offenders, and all such as obstruct or prevent the justice, or any of his assistants, in the performance of their duty.

Proceedings  
to be summary.

**SECTION 5.** When any person shall be brought before a justice of the peace under the provisions of this act, it shall be the duty of the justice to hear and determine in a summary mode, the complaint alleged against the defendant.

Trial may be  
postponed.

**SECTION 6.** Upon good cause shown, the justice may postpone the trial of the cause to a day certain, in which case he shall require the defendant to enter into recognizance, with sufficient security, conditioned that he will appear before the justice at the time and place appointed, then and there to answer the complaint alleged against him.

When defend-  
ant may be  
imprisoned.

**SECTION 7.** If the defendant shall fail or refuse to enter into recognizance, the justice shall commit him to the common jail of the county, there to remain until the day fixed for the trial of the complaint alleged against him.

**SECTION 8.** In case of the breach of any recognizance entered into aforesaid, the same shall be certified and returned to the district court to be proceeded in according to law.

**SECTION 9.** If, in the progress of any trial before a justice of the peace under the provisions of this article, it shall appear that the accused ought to be put upon his trial, for an offense not cognizable before a justice of the peace, the justice shall immediately stop all further proceedings before him, and proceed as in other criminal cases exclusively cognizable before the district court.

Witnesses.

**SECTION 10.** In all cases arising under this article

it shall be the duty of the justice of the peace acting, to summon the injured party, and all others whose testimony may be deemed material, as witnesses at the trial and to enforce their attendance by attachment if necessary.

SECTION 11. All trials before a justice of the peace under this article, shall be by a jury of six competent men, unless the parties agree to leave the decision to the justice, who if they find the defendant guilty, shall assess the fine to be paid by him, which shall not be less than five dollars, nor more than fifty dollars, according to the nature of the offense.

SECTION 12. When proceedings are commenced under the provisions of this article, on the information or complaint of the injured party, his name shall be entered by the justice in his docket as prosecutor, and if the defendant shall be discharged or acquitted the prosecutor shall be adjudged to pay costs; in all other cases of discharge or acquittal the costs shall be paid by the county.

SECTION 13. In all cases of conviction under the provisions of this article, the justice shall enter judgment for the fine and costs against the defendant, and may commit him until the judgment is satisfied, or issue execution on the judgment to the use of the county.

SECTION 14. Any defendant, who shall be committed or taken in execution on such judgment, may at any time after ten days actual imprisonment in jail, take the benefit of the laws for the relief of insolvent debtors; and on taking the oath, and complying with the other requisitions of said law, may be discharged; and in that case the county shall pay the costs of the prosecution, and charge of imprisonment, and for the amount thereof shall be a privileged creditor of the defendant, entitled to be first satisfied out of his property and effects.

SECTION 15. Either the prosecutor or the defendant may appeal to the district court, if he shall, on the day of the rendition of the judgment, file an affidavit stating that he verily believes that injustice has been done by the verdict and judgment, and also enters into recognizance with two sufficient securities, which recognizance shall be in the form, and with the same

Trial by jury.

Fine.

Costs, by whom paid.

When by defendant.

How defendant discharged.

Appeal.

Recognizance.

condition required in appeals from a justice of the peace in civil cases.

SECTION 16. All appeals, taken ten days or more before any term of the district court of the county, shall be returnable to that term, but if taken within ten days next before the commencement of a term, shall be returnable to the second term.

Duty of the  
justice.

SECTION 17. When an appeal is taken and forfeited, according to the foregoing, it shall be the duty of the justice, to cause all material witnesses to enter into recognizance, in the sum of fifty dollars each, conditioned for their appearance to testify in the cause at the term to which the appeal is returnable, and shall, on or before the first day of such term, file in the office of the clerk of the district court, a copy of the entries on his docket, with a copy of the process and affidavit of appeal, and the original recognizances of the appellant and witnesses duly certified.

When cause to  
be tried.

SECTION 18. The clerk of the district court shall enter the cause on his docket, and if the appeal be regularly taken, the cause shall be heard on the merits at the return term, unless good cause be shown for a continuance, and the costs in both courts shall abide the event of the trial in the district court.

SECTION 19. If the appeal be not taken and perfected on the day of rendering judgment by the justice, the judgment shall be affirmed.

Judgment.

SECTION 20. If the judgment of the justice shall be affirmed, or upon a trial in the district court the defendant shall be convicted, and any fine assessed, judgment shall be rendered for such fine, and costs, in both courts against the defendant and his securities.

Costs.

SECTION 21. If in an appeal taken by the prosecutor, the judgment of the justice shall be affirmed, the prosecutor and his securities shall pay all costs of said appeal; and if the judgment of the justice should have imposed the payment of the costs upon said prosecutor, and said judgment be affirmed, the judgment of the district court shall include the costs of both courts and be against the prosecutor and his securities.

Execution.

SECTION 22. If the judgment of the district court be not satisfied in thirty days after the rendition thereof, execution may issue against the party, against whom judgment has been rendered, and his securities,

which shall be made out of the property of the said party, if sufficient thereof be found, if not then out of the property of said securities.

SECTION 23. In all cases not specially provided for by this article, the process and proceedings before the justice, shall be governed by the laws regulating proceedings in justices courts in civil cases.

SECTION 24. It shall be the duty of the justice before whom any conviction may be had under this article, if there be no appeal, to make out and certify and within ten days after the date of the judgment, deliver to the treasurer of the county a statement of the case, the amount of the fine, and the name of the constable charged with the collection thereof, and the county treasurer shall charge the constable with the amount of such fine; and unless the same be paid into the county treasury within thirty days after the date of the judgment, the commissioners of the county shall, at their next meeting, render judgment against such officer, for the amount due and twenty per centum thereon, making however proper deductions for insolvencies, on which judgment execution shall be issued as other executions are, and the proceeds paid into the county treasury.

Duty of the  
county treasurer.

SECTION 25. It shall be the duty of the county treasurer, to give to the different officers who may be charged on his book, with sums payable into the county treasury, and against whom judgment may be rendered at least six days' notice, previous to the meeting of the county commissioners.

Must give  
notice.

SECTION 26. Any justice of the peace, sheriff, coroner, constable, or other officer, who shall willfully neglect or refuse to perform any duty enjoined on him by this article, shall be deemed guilty of a misdemeanor in office; and shall moreover pay the sum fifty dollars. And any person who shall, when summoned to aid in arresting or securing an offender, refuse to give such assistance shall pay five dollars.

Penalties.

SECTION 27. Fines and penalties incurred under the provisions of this article, in cases not otherwise provided, may be recovered before any justice by action of debt.

How recovered.

SECTION 28. When a trial under the provisions of this article shall be continued by the justice, it shall not be necessary for the justice to summon any wit-

Subpoena unnecessary on adjournment.

ness who may be present at the continuance, but said justice shall verbally notify such witnesses as either party may require, to attend before him to testify in the cause on the day set for trial, which verbal notice shall be as valid as a summons.

SECTION 29. This act to take effect and be in force from and after the first day of April, 1838.

SECTION 30. All acts and parts of acts, that contravene the provisions of this act, from and after the first day of April, 1838, are hereby repealed.

## ARTICLE 13.

### OF THE FORMS OF WRITS OR PROCESS.

SECTION 1. The following, or other equivalent forms, shall be used by the justice of the peace, in proceedings to be had under this act, to wit:

#### A SUMMONS.

\_\_\_\_\_ TERRITORY, }  
 \_\_\_\_\_ county, } ss.

To the constable of \_\_\_\_\_ township, in said county:

In the name of the United States of America, you are hereby commanded to summon \_\_\_\_\_ if \_\_\_\_\_ shall be found within your township, to be and appear before the undersigned one of the justices of the peace in and for the said county, on the \_\_\_\_\_ day of \_\_\_\_\_ 18— at \_\_\_\_\_ of the clock in the \_\_\_\_\_ noon at \_\_\_\_\_ in the said township (or county,) to answer the complaint of \_\_\_\_\_.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

A. B., justice.

#### A WARRANT.

\_\_\_\_\_ TERRITORY, }  
 \_\_\_\_\_ county, } ss.

To the constable of \_\_\_\_\_ township in said county:

In the name of the United States of America, you are hereby commanded to take the body of \_\_\_\_\_ if to be found within your township, and \_\_\_\_\_ bring

forthwith before the undersigned, one of the justices of the peace in and for said county, at —, in said township, to answer the complaint of —, and you are also commanded to give due notice thereof to the said plaintiff.

Given under my hand this — day of —, 18—.  
C. D., justice.

## A SUBPENA.

— TERRITORY, }  
— county, } ss.

To —:

In the name of the United States of America, you are hereby required to appear before the undersigned, one of the justices of the peace in and for said county, at —, in the town (or township) of — on the — day of —, at — of the clock in the —noon of said day, to give evidence in a certain cause then and there to be tried between —, plaintiff and —, defendant, on the part of the —.

Given under my hand this — day of —, 18—.  
E. F., justice.

## A VENIRE FOR A JURY.

— TERRITORY, }  
— county } ss.

To the constable of — township in said county:

In the name of the United States of America, you are hereby commanded to summon — good and lawful men, to be and appear before the undersigned, one of the justices of the peace in and for said county, on the — day of — present (or next) at — of the clock in the —noon of said day, in the town (or township) of — to make a jury, for the trial of an action of — between —, plaintiff, and —, defendant.

Given under my hand this — day of —, 18—.  
G. H., justice.

## AN EXECUTION

— TERRITORY, }  
— county, } ss.

To the constable of — township in said county:

Whereas judgment against — for the sum of — and — costs, lawful money of the United

States, was recovered the — day of ——— before the undersigned, one of the justices of the peace in and for said county, at the suit of ———. These are therefore, in the name of the United States of America, to command you to levy distress on the goods and chattels of the said ——— (excepting such as the law exempts,) and make sale thereof according to law in such cases made and provided, to the amount of said sums, together with thirty-seven and half cents for this execution, and the same return to me within thirty days.

Given under my hand this — day of ——— 18—.

.J. K., justice.

In case of a  
stay of execu-  
tion.

Where security has been given for stay of execution on the judgment against the principal and security:

——— TERRITORY, }  
——— county, } ss.

To the constable of ——— township in said county:

Whereas judgment against ——— for the sum of ——— and ——— costs, lawful money of the United States, was recovered the — day of ——— 18—, before the undersigned, a justice of the peace in and for the said county, at the suit of ———. And whereas ——— on the — day of ———, in the year aforesaid, became security to pay the said judgment with interest on the same, in ——— months from the date of the judgment aforesaid, agreeably to law in the payment of which the said ——— have failed.

These are therefore in the name, &c. (as in common form.)

#### A WRIT OF ATTACHMENT.

——— TERRITORY, }  
——— county, } ss.

To the constable of ——— township in the said county:

In the name of the United States of America you are commanded to attach C. D. by all and singular his goods, chattels, moneys, effects and credits, or so much thereof as shall be sufficient to satisfy the sum of—— (the sum sworn to,) with interests and costs of suit, in whosoever hands or possession the same may be found in your township, and so provide that the goods and

chattels so attached, may be to further proceedings thereon, as the law requires; and also the said C. D. if to be found, to be and appear before me at my office, in the town (or township) of — on the — day of — 18— to answer unto — plaintiff; and also that you summon as garnishees all such persons found in your township as may be directed by the plaintiff or his agent, to appear before the said justice at the time and place aforesaid, to answer interrogatories as the justice may propound, and have you then there this writ.

Given under my hand this — day of — 18—.

O. P., justice.

Approved January 17, 1838.

---

### No. 59.

**AN ACT** to incorporate the stockholders of the bank of Wisconsin, at Prairie du Chien.

**SECTION 1.** *Be it enacted by the council and house of representatives of the territory of Wisconsin,* That a bank shall be established in the township of St. Anthony, in the village of St. Friele and county of Crawford, the capital stock whereof shall be one hundred and fifty thousand dollars, to be divided into shares of one hundred dollars each, and that the books of subscription towards said stock, shall, on the first Tuesday in June next, be opened at Prairie du Chien, under the superintendence of James H. Lockwood, Hercules S. Dousman, Jean Brunet, Alexander McGregor, Thomas P. Brunet, Joseph Rolette, and Levi R. Marsh, who are hereby appointed commissioners to receive the subscriptions to the said capital stock, who shall be the first directors, and are authorized to elect their president from their own number, and to conduct every operation of the institution until the first election for directors and president shall take place. And they shall give at least thirty days notice of the time and place of opening said subscriptions, in one or more newspapers printed in the territory. And the books for receiving subscriptions aforesaid shall continue open for

Capital stock, and mode of subscribing for and apportioning the same.